HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1293 of 2005

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Between:

The Deputy Executive Engineer,
Panchayat Raj Sub-Division – II,
Narasaraopet and another

……Appellants

And

R.Suribabu and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellants : Government Pleader for Panchayat Raj

Counsel for Respondent No.1 : Shri B.Chinnapa Reddy

October 23, 2006

Per G.S. SINGHVI, CJ

This is an appeal for setting aside order dated 15-3-2005 passed by the learned Single Judge in Writ Petition No.12852 of 2001, whereby he declined to interfere with Award dated 10-11-2000 passed by the Presiding Officer, Labour Court, Guntur (respondent No.2) in I.D.No.298 of 1994.

Respondent No.1, R.Suribabu, who possesses the qualification of ITI (Draughtsman), was appointed as a Work Inspector (Civil) in the services of Panchayat Raj Department at Narsaraopet on 1-11-1992. He worked till 1-1-1994 when his services were discontinued. After six months, he served demand notice dated 6-7-1994 for reinstatement, but the concerned authority of the department did not entertain his prayer. He then filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act No.32 of 1987. In his application, respondent No.1 claimed that he had continuously worked as Work Inspector (Civil) from 1-11-1992 to 1-1-1994 and his services were terminated without holding any enquiry and without giving him notice and compensation. In the counter filed on behalf of Deputy Executive Engineer, Panchayat Raj Sub-Division-II, Narsaraopet (appellant No.1 herein), it was averred that Panchayat Raj Department is not an 'industry' within the meaning of Section 2(j) of the Act; that the services of the workman (respondent No.1 herein) had not been terminated; that respondent No.1 had been engaged for a specific work and was paid as per the SS rates fixed by the Government; that he worked as and when the work was available; that he was told about the purely temporary nature of his engagement; that he used to quarrel with office staff and subordinate staff; that he did not attend duties with effect from 10-12-1991 and voluntarily left the service without any notice or

intimation, and that there was a delay of six months in raising the demand.

On the pleadings of the parties, respondent No.2 framed the following issues:

1) Whether the respondent department is not an industry as pleaded by the respondents?

2) Whether there is any termination of service of the applicant on 1-1-1994 as alleged by him?

3) If so, whether the same is legal and valid?

4) If not, to what relief the applicant is entitled to?

Respondent No.1 appeared as W.W.1 and made statement supporting his claim. He also produced two documents, which were marked as W1 and W2. On their part, the appellants did not adduce any evidence.

Respondent No.2 relied on the judgment of the Rajasthan High Court in **Chowtan Lal v. State of Rajasthan**[1] and held that Panchayat Raj Department falls within the definition of 'industry' under Section 2(j) of the Act. He than analysed the evidence and concluded that respondent No.1 had continuously worked from 1-11-1992 to 31-12-1993 and that his services were terminated without complying with Section 25-F of the Act. Respondent No.2 rejected the plea of the petitioners that respondent No.1 had voluntarily abandoned the job by observing that no evidence has been produced to prove this assertion. For the sake of reference, paragraphs 7 and 8 of the award passed by respondent No.2 are reproduced below:

> "7. Point No.2:- According to the petitioner, he worked in the respondent department from 1-11-1992 to 1-1-1994 on which date his services were terminated by the respondents orally. The respondents have denied about the termination of service of the applicant on 1-1-1994 and according to them, the

applicant stopped from attending to his work from 30-12-1993 voluntarily and there is no termination of service. The applicant as WW1 has stated about his joining in the respondent's office on 1-11-1992 as Work Inspector and worked continuously up to 31-12-1993 and he was removed from service on 1-1-1994. In the cross-examination, he has admitted that he was appointed on daily wages but he denies that he did not work continuously and there are breaks in his service and he also denies that he voluntarily abandoned the job from 30-12-1993. He also denies that he left the job on his own accord with a view to secure better employment. Therefore, as per the evidence of WW1, it is established that he worked from 30-11-1992 to 31-12-1993. Since the respondents are pleading that the applicant voluntarily abandoned the services on 30-12-1993, the burden is on them to establish the same, but they have not produced any evidence or record to show that the applicant only worked up to 30-12-1993. As the respondents have failed to establish the voluntary abandonment of the job by the applicant, the contention of the applicant that his services were terminated orally on 1-1-1994 has to be accepted. Thus, there is termination of service of the applicant on 1-1-1994.

8. The next point to be considered is whether the said termination is legal and valid. According to WW1, he worked continuously from 1-11-1992 to 31-12-1993. The respondents have pleaded that the applicant was engaged by them temporarily as casual worker on daily wages whenever there is availability of work and he worked from November, 1992 to December, 1993 intermittingly with certain breaks. WW1 has stated in his evidence that he worked continuously from 1-11-1992 to 31-12-1993 and he denied in his cross-examination about the breaks of his service and stated about his continuous working during the said period. The respondents have not produced any evidence on record to show the breaks in the service of the applicant during the above said period. As the respondents have failed to establish their case that the applicant is only engaged whenever there is work and he has not continuously worked, the evidence of WW1 that he worked from 1-11-1993 to 31-12-1993 continuously has to be accepted. Since the applicant has worked for more than one year continuously, he is entitled to the benefits of Sec.25-F of I.D.Act.

> Admittedly, no notice was issued to the petitioner nor he was paid compensation as required under Sec.25-F of I.D. Act by the respondents as on the date of termination. Thus, the termination of the applicant is not legal and valid. Accordingly, the point is held."

On the basis of the above findings, respondent No.2 declared the termination of the service of respondent No.1 as illegal and ordered his reinstatement with full back wages and continuity of service.

The appellants challenged the award in Writ Petition No.12852 of 2001. The learned Single Judge noted that the writ petitioners (appellants herein) did not produce any evidence to substantiate their assertion that respondent No.1 had been engaged for a fixed period and that he had voluntarily abandoned the service and held that the award passed by respondent No.2, after considering the evidence of respondent No.1, does not call for interference under Article 226 of the Constitution.

We have heard learned counsel for the parties. Learned Government Pleader for Panchayat Raj argued that even though the findings recorded by respondent No.2 on the issue of total period of service rendered by respondent No.1 and non-compliance of Section 25-F are pure findings of fact, the same are liable to be upset because respondent No.1 did not adduce any tangible evidence in support of his claim. Learned Government Pleader emphasized that the bald statement made by respondent No.1 that he had continuously worked from 30-11-1992 to 31-12-1993 was not supported by any contemporaneous evidence and, therefore, the same ought to have been discarded by respondent No.2. He, however, conceded that the appellants did not adduce any evidence to substantiate their assertion that respondent No.1 had been engaged for a specified period for doing specified work and that he had voluntarily left the service. In reply to the Court's query, the learned Government Pleader admitted that respondent No.1 had been

engaged on 1-12-1992 and he continued to serve till 31-12-1993.

In our opinion, the uncontroverted evidence produced by respondent No.1 that he had continuously worked as Work Inspector (Civil) in Pancyahat Raj Department and that his service was terminated without giving notice and compensation could be legitimately relied by respondent No.2 for recording a finding that the action of the employer was violative of Section 25-F of the Act. The writ petition filed by the appellants for quashing the award of respondent No.2 was essentially meant for issue of a writ of certiorari and, as the appellants failed to show that the impugned award is vitiated due to any jurisdictional defect or violation of the rules of natural justice or perversity in the findings of fact, the learned Single Judge rightly refused to interfere with the same.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court,

Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[2] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawa Ltd.**[4], the Supreme Court considered the question whether in exercise power under Article 227, the High Court can interfere with the discreti exercised by the Tribunal under Section 11-A of the Act and observed :

"Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested

with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[5] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob** (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[6]

In **Surya Dev Rai v. Ram Chander Rai**[7]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue

writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
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> ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
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> iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court

as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

In the result, the appeal is dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

23-10-2006
svs

[1] 1990 FLR(60) 213

[2] AIR 1964 SC 477

[3] AIR 1970 SC 61

[4] (1984) 3 Supreme Court Cases 5

[5] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[6] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[7] AIR 2003 SC 3044